

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This settlement agreement (“Settlement Agreement”) is entered into by and between CalSafe Research Center, Inc., (“CalSafe”), on the one hand, and Harbor Freight Tools USA, Inc. (“Harbor Freight” or “Defendant”) on the other hand, with CalSafe and Harbor Freight each individually referred to as a “Party” and collectively as the “Parties.” CalSafe is a corporation in the State of California serving in the interest of the general public by seeking to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Harbor Freight employs ten or more individuals and is a person in the course of doing business for purposes of The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6 et seq. (“Proposition 65”).

1.2 General Allegations

CalSafe alleges that Harbor Freight distributes solar rope lights for sale in California that contain Di(2-ethylhexyl) Phthalate (“DEHP”) and that it does so without first providing the health hazard warnings required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm.

1.3 Product Description

The products covered by this Settlement Agreement are defined as, and expressly limited to, Harbor Freight Tools, One Stop Gardens 1 Solar Rope Light, UPC#9236356881, (hereinafter collectively “the Products”) that contain DEHP and that are manufactured, sold or distributed for sale in California by Harbor Freight.

1.4 Notice of Violation

On July 15, 2021, CalSafe served Harbor Freight, the California Attorney General and the other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Harbor Freight violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks associated with exposures to DEHP from the Products. On September 23, 2021, CalSafe and Harbor Freight entered into an agreement wherein CalSafe agreed to refrain from filing suit against Harbor Freight, and Harbor Freight agreed to toll the statute of limitations from September 15, 2021, up to and including December 15, 2021.

To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

Harbor Freight denies the material, factual and legal allegations in the Notice and maintains that all of the products it sold and/or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be

construed as an admission by Harbor Freight or any of its officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Harbor Freight or any of its officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Harbor Freight. This Section shall not, however, diminish or otherwise affect Harbor Freight's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement has been fully executed by the Parties.

2. INJUNCTIVE RELIEF

Not later than 90 days after the Effective Date, and continuing thereafter, the Products that Harbor directly manufacturers, imports, distributes, sells or offers for sale in California shall be: (a) Reformulated Products pursuant to Section 2.1 below; or (b) labeled with a clear and reasonable warning pursuant to Section 2.2 below; or (c) discontinued for sale. Section 2 of this Settlement Agreement shall not apply to Products that are already in the stream of commerce at any time up to 90 days after the Effective Date.

2.1 Reformulation Standards

"Reformulated Products" are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or any other methodologies utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.2 Warning

(a) Where required, Harbor Freight shall provide Proposition 65 warnings as follows:

⚠ WARNING: Consuming this product can expose you to chemicals including di(2- ethylhexyl) phthalate (DEHP) which are known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/fact-sheets/phthalates

Or

⚠ WARNING: Cancer and Reproductive Harm-www.P65Warnings.ca.gov

This shall constitute compliance with Proposition 65 with respect to the chemical in the Subject Product.

(b) If Harbor Freight elects to use the warning statements identified in Section 2.2(a), it may also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”.

(c) The requirements for warnings, set forth in subsection (a) above are imposed pursuant to the terms of this Settlement Agreement. The parties recognize that these are not the exclusive methods for providing a warning under Proposition 65 and its implementing regulations.

(d) If Proposition 65 warnings for lead should no longer be required, Harbor Freight shall have no further obligations pursuant to this Settlement Agreement.

(e) In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different from those set forth above, Harbor Freight shall be entitled to use, at their discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

2.3 Grace Period for Existing Inventory of Products

The injunctive requirements of Section 2 shall not apply to Products that are already in the stream of commerce as of the Effective Date, which Products are expressly subject to the releases provided in Section 4.1.

3. MONETARY SETTLEMENT TERMS

3.1 Total Settlement Penalty

In full satisfaction of all potential civil penalties, attorneys’ fees, and costs, Harbor Freight shall make a total settlement payment of Thirty Thousand dollars (**\$30,000.00**) (“Total Settlement Amount”). The Total Settlement Amount shall be apportioned into a Civil Penalty, Attorney’s Fees and Costs and a Cost Reimbursement as set forth in Sections 3.2 and 3.3 below. Harbor Freight shall issue these payments collectively as part of the total payment described below within twenty-one (21) days of the Effective Date via wire transfer to Manning Law, APC. After receipt of the wire transfer, Manning Law, APC shall be responsible for forwarding the respective payments to OEHHA and CalSafe. Harbor Freight assumes no responsibility or liability for insuring any payments are made by CalSafe’s Counsel.

Wire Instructions:

Routing Transit No.: 021000021
Bank: J.P. Morgan Chase Bank, N.A.
Bank Address: 270 Park Ave. New York, NY. 10017
Account No.: 8029 22919

Beneficiary: The Law Offices of Joseph R. Manning, Jr., APC, Attorney Client Trust Account

3.2 Civil Penalty Payment

Pursuant to Health and Safety Code§ 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Harbor Freight agrees to Five Thousand dollars (**\$5,000.00**) in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code§§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by CalSafe.

3.3 Attorney Fees and Costs

The Parties reached an accord on the compensation due to CalSafe and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Harbor Freight Harbor Freight agrees to pay Twenty-Five Thousand dollars (**\$25,000.00**) to CalSafe and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Harbor Freight, and negotiating a settlement.

3.4 Tax Documentation

Harbor Freight agrees to provide a completed IRS 1099 form for its payments to, and CalSafe and Manning Law agree to provide IRS W-9 forms to Harbor Freight. The Parties acknowledge that Harbor Freight cannot issue any settlement payments pursuant to Section 3 above until after Harbor Freight receives the requisite W-9 forms from CalSafe’s counsel.

4. CLAIMS COVERED AND RELEASED

4.1 CalSafe’s Release of Harbor Freight and Downstream Customers and Upstream Vendors Involved in the Sale of the Products

In further consideration of the promises and agreements contained in this Settlement Agreement, and for the payments to be made pursuant to Section 3 above, CalSafe, in its representative capacity, and acting on its own behalf, and on behalf of his past and current agents, representatives, attorneys, successors and/or assigns, hereby, and not on behalf of the public, waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims related to the Products, including, without limitation, all causes of action, in law or equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys’ fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively, “Claims”), against Harbor Freight, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Hobby Lobby directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, importers, and licensees and upstream vendors involved in the sale of the Products (collectively, “Released Parties”).

4.2 Harbor Freight’s Release of CalSafe

Harbor Freight, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors and assignees hereby waives any and all claims against

CalSafe and its attorneys and other representatives, for any and all actions taken, or statements made by CalSafe and its attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

4.3 CalSafe's Individual Release of Claims

CalSafe, in its individual capacity and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees and not in its representative capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all Claims against Harbor Freight and the Released Parties with regard to the Products. CalSafe acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASING PARTY.

CalSafe in its individual capacity only, and on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

5. SEVERABILITY

In the event that any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

6. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Harbor Freight may provide written notice to CPG of any asserted change in the law and shall have no further obligations pursuant to this Settlement Agreement.

7. NOTICE

When any Party is entitled to receive any notice under this Settlement Agreement, the notice shall be sent by first class mail or electronic mail to the address set forth in this Paragraph. Any Party may modify the person and address to whom the notice is to be sent by sending the

other Party notice by certified mail, return receipt requested. Said change shall take effect on the date the return receipt is signed by the Party receiving the change.

Notices shall be sent to:

For CalSafe
Joseph R. Manning, Jr.
Manning Law, APC
20062 SW Birch St. Suite 200
Newport Beach, CA 92660

For Harbor Freight:
Anne Marie Ellis
aellis@buchalter.com
Buchalter
18400 Von Karman Avenue, Suite 800
Irvine, CA 92612-0514

8. COUNTERPARTS: FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

9. COMPLIANCE WITH HEALTH AND SAFETY CODE §25249.7(f)

CalSafe and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code §25249.7(f).

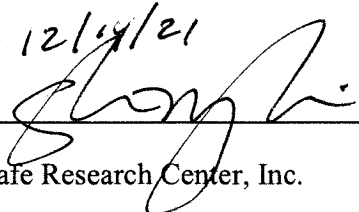
10. MODIFICATION

The Settlement Agreement may be modified only by written agreement of the Parties.

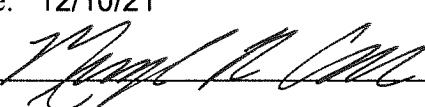
11. AUTHORIZATION

This Settlement Agreement contains the sole and entire agreement of the parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any party with respect to the other party or the subject matter hereof.

AGREED TO:

Date: 12/14/21
By: 
CalSafe Research Center, Inc.

AGREED TO:

Date: 12/10/21
By: 
Harbor Freight Tools USA, Inc.